

Schedule 30
Phase Viability Test

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1 Financial Model

1.1 Updated Financial Models

1.1.1 The Original Financial Model is annexed to this Agreement at **Schedule 12**.

1.1.2 The Original Financial Model will be used to carry out the Phase Viability Tests for each Regeneration Phase and for the purposes of determining the Council Land Value and Overage.

1.1.3 Notwithstanding the general obligations on the Partner set out in clause 14 of the Agreement to rerun and update the Updated Financial Model, the Partner shall rerun and update the Updated Financial Model:

- (a) in respect of each Regeneration Phase, prior to the preparation of a Planning Application for Detailed Planning Permission, for the purpose of carrying out the Pre Planning Phase Viability Test for the such Regeneration Phase;
- (b) in respect of each Regeneration Phase, within thirty (30) Working Days following satisfaction of the Phase Conditions set out at clauses 6.2.1-6.2.8 for the purposes of carrying out the Post Planning Phase Viability Test and determining the Council Land Value for the relevant Regeneration Phase (which Updated Financial Model shall be referred to as the "**Base Case Model**" for the relevant Regeneration Phase);
- (c) in respect of each Regeneration Phase on the Overage Calculation Date in respect of the relevant Regeneration Phase (which shall be referred to as the "**Overage Model**" for the relevant Regeneration Phase) for the purposes of determining the Overage (if any) relevant to the Regeneration Phase.

1.1.4 Each Updated Financial Model shall:

- (a) be provided to the Council in electronic format;
- (b) not be structurally altered from the format and structure of the Original Financial Model;
- (c) be prepared on an open book basis in compliance with clause 19 (Audit and Open Book);
- (d) include only the inputs expressly contemplated by this Agreement, including [the Minimum Council Land Value],

Partner Income, Partner Costs, and the Partner Priority Return;

[Note: Parties to confirm whether MCLV is input in the Model]

- (e) be accompanied by a statement prepared by or on behalf of the Partner detailing and describing the changes from the information provided in connection with the previous Updated Financial Model and the reasons why such changes have been made and the financial consequences of the changes; and
- (f) be used to assess the progress of the Regeneration, to assess Partner Costs and Partner Income, and to calculate any Council Land Value and Overage (as appropriate).

1.1.5 Without prejudice to clause 14 the Council shall be entitled to:

- (a) undertake due diligence in respect of each Updated Financial Model;
- (b) acting reasonably, seek clarification from the Partner on any aspect of each Updated Financial Model and, if the Council considers that there may be an error in an Updated Financial Model or the Updated Financial Model does not comply with the terms of this Agreement, request that the Partner reruns the Updated Financial Model to correct the error, provided that, if the rerun of the Updated Financial Model shows that there was no such error, the Council shall reimburse the Partner with its reasonable and properly incurred costs of rerunning the Updated Financial Model; and
- (c) call into question individual figures contained in an Updated Financial Model and in the event of a dispute between the parties regarding one or more of the figures contained in an Updated Financial Model, the matter may be referred to an Expert for determination.

1.1.6 Where a Dispute in relation to a Base Case Model is referred to an Expert and the Expert's findings are such that changes are required to be made to the Base Case Model and following those changes the amount appearing in cell L53 changes so that it is equal to or exceeds the Minimum Council Land Value for such Regeneration Phase, the Post Planning Phase Viability Test shall not be deemed to be satisfied unless the Partner is prepared to accept the Expert's findings and if the Partner is prepared to accept the Expert's finding they shall be incorporated into the Base Case Model for the relevant Regeneration Phase.

1.2 **Duration of obligations**

The obligations in this **Schedule 30** shall continue until payment of Overage (if any) pursuant to paragraphs 3.4 or 3.6 of Schedule 29 or, the date on which it is agreed or determined that no Overage is payable following the sale of the last of the Private Sale Homes to be constructed pursuant to this Agreement.

2 **Phase Viability Testing**

2.1 Subject to paragraph 1 of this Schedule, the purpose of each Phase Viability Test shall be to establish the financial viability of that Regeneration Phase. Each Phase Viability Test will be satisfied where the relevant Updated Financial Model for the Regeneration Phase generates a Council Land Value equal to or exceeding the Minimum Council Land Value for such Regeneration Phase.

2.2 If on carrying out any Post Planning Phase Viability Test the Base Case Model generates an amount in cell L53 (i.e. a Council Land Value) which is equal to or greater than the Minimum Council Land Value such amount shall constitute the Council Land Value for the relevant Regeneration Phase SAVE WHERE at such time there is outstanding to the Partner a Shortfall in respect of a previous Regeneration Phase in which case the Partner shall be entitled to deduct and retain and reduce the Council Land Value for such Regeneration Phase by the lesser of :-

2.2.1 The amount of Shortfall outstanding; and

2.2.2 The difference between the Council Land Value shown in cell L53 and the Minimum Council Land Value for such Regeneration Phase

And after such deduction, the balance shall constitute the Council Land Value for such Regeneration Phase and become payable to the Council on completion of the relevant Building Lease

2.3 In assessing whether any Phase Viability Test is satisfied in respect of a Regeneration Phase, if the Phase Viability Test would otherwise not be satisfied and the Partner and the Council (both acting reasonably) having first given due consideration to the basket of options listed in paragraph 2.4 below, the Partner may include as Partner Income any Overage held in the Escrow Account to the extent necessary to satisfy a Post Planning Phase Viability Test and shall be entitled to withdraw from the Escrow Account such sum as has been included as Partner Income in the Post Planning Phase Viability Test for the relevant Regeneration Phase under this paragraph 2.3.

2.4 Where any Phase Viability Test is not satisfied, the Council, the Partner and (where applicable) RP shall discuss and jointly consider changes to the Project including but not limited to the "basket of options" listed below:

2.4.1 the availability of grant;

- 2.4.2 advancing any part of the Regeneration Phase or a change in the sequence of the Regeneration Phases;
 - 2.4.3 changes to the Project (including without limitation increasing or decreasing the size, number or proportion of Private Sale Homes, affordable housing, amending any community facilities and amending any other obligation and/or outputs contained within this Agreement);
 - 2.4.4 the more efficient use of empty properties on the Regeneration Site;
 - 2.4.5 postponing a Regeneration Phase Longstop Date(s) or the Regeneration Long Stop Date by an agreed period;
 - 2.4.6 reviewing the Master Programme for one or more Regeneration Phases;
 - 2.4.7 halting the works on a temporary basis for an agreed period;
 - 2.4.8 reviewing the Phase Viability Test in return for a corresponding decrease in the Private Sale Homes Income;
 - 2.4.9 the provision of financial resources by the Parties; and
 - 2.4.10 trends in relation to the regeneration of residential developments which were not foreseeable at the date of this Agreement
- 2.5 Where the Council, the Partner and (where applicable) RP agree to any changes to the Project pursuant to paragraph 2.4, the Master Programme, the relevant Updated Financial Model, the Regeneration Objectives and/or this Agreement shall be amended as appropriate.
- 2.6 Where in relation to any Regeneration Phase and notwithstanding paragraphs 2.3 and 2.4, the Phase Viability Test is not satisfied, the Partner shall not be under any liability to proceed with the relevant Regeneration Phase but the Partner shall be entitled to give written notice to the Council to the effect that the Partner is willing to proceed with the relevant Regeneration Phase irrespective of failing to satisfy the Phase Viability Test on condition that any Shortfall can be carried forward to one or more Future Phases and recovered pursuant to either paragraph 2.2 of this Schedule or paragraph 2.3 of Schedule 30 and upon the giving of such written notice to the Council, the Phase Viability Test as a Phase Condition shall be deemed to be waived provided that this does not result in the Council Land Value for that Regeneration Phase being less than the Minimum Council Land Value, and subject to the prior satisfaction of the other Phase Conditions the Partner shall proceed with the relevant Regeneration Phase.